



Understanding FERPA

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What is FERPA?

- ✍ The Family Educational Rights and Privacy Act of 1974 (amended over time), sometimes referred to as the “Buckley Amendment”
- ✍ A piece of civil rights legislation enacted to protect the rights of students and their parents



Purpose of FERPA “two-fold”:

- ✍ Assure parents/students access to student's education records
- ✍ Protect parents'/students' right to privacy by limiting transferability of education records without their consent



Whose FERPA rights?

- ✍ Parents have the rights until the student turns 18 or is attending an institution of postsecondary education
- ✍ Student has the rights at age 18 or upon commencement of attendance at a postsecondary institution



Who is bound by FERPA?

- ✍ Any “educational agency or institution” that receives federal funds under any program administered by the Secretary of Education
- ✍ Includes:
 - ✍ All public schools
 - ✍ Many private schools



Who is bound . . .

- ✍ Officers/directors ✍ the school board
- ✍ Employees ✍ administrators, teachers
- ✍ Contractors ✍ attorneys, auditors, consultants, therapists



What is protected?

- ✍ Education records

- ✍ Contain information directly related to a student
- ✍ Maintained by the educational agency/institution or a party acting for the agency/institution

- ✍ Personally identifiable information contained in education records



How is it protected?

- ✍ Parents/students have the right to inspect and review education records
- ✍ Parents/students have the right to challenge and require the school to amend any portion of the education records that are inaccurate, misleading, or otherwise in violation of the student's privacy rights
- ✍ Parents/students have the right to prevent access to records without their prior written consent . . . unless FERPA specifically allows for nonconsensual disclosure



Examples of Nonconsensual Disclosures

- ✍ Teachers/district officials with a “legitimate educational interest”
- ✍ Officials of another school system/school where the student seeks or intends to enroll
- ✍ Authorized representatives of federal, state educational authorities
- ✍ In connection with a health or safety emergencies
- ✍ In response to a lawfully issued subpoena



Permissive Disclosures . . .

- ✍ Directory information
- ✍ State/local juvenile justice systems
- ✍ Organizations conducting educational studies
 - ✍ Develop, validate or administer predictive tests
 - ✍ Administer student aid programs
 - ✍ Improve instruction



Consequences of Wrongful Disclosure

- ✍ No private right of action under FERPA
- ✍ Complain to Family Policy Compliance Office (FPCO) at US Department of Education
- ✍ Investigation by FPCO
- ✍ Attempt to resolve through voluntary compliance
- ✍ If not, findings and compliance plan
- ✍ Worst case scenario: withholding of federal funds after hearing



Application to Your Work

- ✍ What information do you need to know?
- ✍ If the information you need to know is subject to FERPA, can you obtain access to the information through nonconsensual disclosure?



Letter to Foerster/Pennsylvania Department of Education

- ✍ PDE sought guidance from FPCO regarding application of FERPA
- ✍ Issue was a Memorandum of Understanding between the PDE and an organization conducting autism prevalence studies (CADDRE) under a grant from the CDC
- ✍ Pursuant to the MOU, CADDRE would have access to records of students in the possession of PDE who had been identified by school districts as developmentally disabled



FPCO finds FERPA Does Not Permit This Disclosure

- ✍ PDE may obtain the records from the school districts if:
 - ✍ audit/evaluation of Federal or State supported education program, or
 - ✍ Enforcement/compliance with legal requirements relating to the program
- ✍ PDE may not “redisclose” the information



FERPA Does Not Permit . . .

- ✍ “authorized representative” of a state agency not broad enough to cover third party conducting study
 - ✍ Limited to persons under the direct control of the PDE such as employees, officials, or contractors
 - ✍ “Contractor” limited to situations where PDE is doing something the covered entity would otherwise be doing itself



FERPA Does Not Permit . . .

- ✍ “Study” exception inapplicable
 - ✍ Limited to studies “for or on behalf of” PDE
 - ✍ Limited to studies in order to:
 - ✍ Develop, validate, administer predictive tests
 - ✍ Administer student aid provisions
 - ✍ Improve instruction



Bottom Line

- ✍ CADDRE was not an “authorized representative” of PDE because they were not under the direct control of PDE
- ✍ The autism prevalence study was authorized by a third party, not PDE, and did not serve the limited purposes allowed under the “study” exception



How can studies be done without violating FERPA?

- ✍ Disclosure in aggregate or other non-personally identifiable form
- ✍ Obtain parental consent



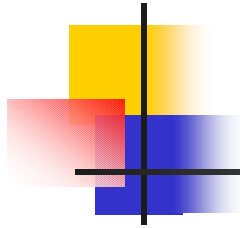
Personally Identifiable

- ✍ Student's name
- ✍ Name of parents or family members
- ✍ Addresses of student/family
- ✍ Personal identifiers (SSN, ID number)
- ✍ List of personal characteristics that would make the student's identity easily traceable
- ✍ Other information that would make the student's identity easily traceable



Personally Identifiable

- ✍ Examples of information that would make identity “easily traceable”:
 - ✍ Physical description (race, sex, appearance)
 - ✍ Date and place of birth
 - ✍ Religion, national origin
 - ✍ Participation in sports, clubs, activities
 - ✍ Academic performance
- ✍ Release of small numbers of aggregated or statistical information



Questions?

- ✍ Contact the Family Policy Compliance Office at:

United States Department of Education
400 Maryland Ave. SW
Washington DC 20202-5901
(202) 260-3887

- ✍ FERPA letters available at

www.ed.gov/policy/gen/guid/fpc/ferpa/library/index.html